

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
)	
Request for Review of the)	
Decision of the)	
Universal Service Administrator by)	
)	
Everett School District No. 2)	File No. SLD-141015
Everett, Washington)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45 ✓
Universal Service)	
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21
National Exchange Carrier Association, Inc.)	

ORDER

Adopted: November 28, 2001

Released: November 29, 2001

By the Common Carrier Bureau:

1. Before the Common Carrier Bureau (Bureau) is a Request for Review from the Everett School District No. 2 (Everett), Everett, Washington.¹ Everett seeks review of a decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator), which denied one of Everett's Funding Year 2 requests for discounted internal connections on the grounds that more than 30% of the request was for ineligible services.² For the reasons discussed below, we grant Everett's Request for Review and remand for further consideration.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.³ In order to receive discounts on eligible services, the Commission's rules require that the applicant submit to the Administrator a completed FCC Form 470, in which the applicant sets forth its

¹ Letter from Ken Toyn, Everett School District No. 2, to Federal Communications Commission, filed May 22, 2000 (Request for Review).

² Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

³ 47 C.F.R. §§ 54.502, 54.503.

technological needs and the services for which it seeks discounts.⁴ Once the applicant has complied with the Commission's competitive bidding requirements and entered into an agreement for eligible services, it must file an FCC Form 471 application to notify the Administrator of the services that have been ordered, the carrier with whom the applicant has entered into an agreement, and an estimate of funds needed to cover the discounts to be given for eligible services.⁵ Approval of the application is contingent upon the filing of FCC Form 471, and funding commitment decisions are based on information provided by the school or library in this form.

3. Applicants may only seek support for eligible services.⁶ The instructions for the FCC Form 471 clearly state: "YOU MAY NOT SEEK SUPPORT ON THIS FORM FOR INELIGIBLE SERVICES."⁷ In addition, SLD's web site contains a list of eligible services and information on how to file an application.⁸ Although SLD reduces a funding request to exclude the cost of ineligible services in circumstances where the ineligible services represent less than 30 percent of the total funding request, SLD will deny a funding request in its entirety if ineligible services constitute thirty percent or more of the total.⁹ An applicant can avoid denial by subtracting out, at the time of its initial application, the cost of ineligible services.

⁴ 47 C.F.R. § 54.504 (b)(1), (b)(3).

⁵ 47 C.F.R. § 54.504(c).

⁶ 47 C.F.R. § 54.504 *et seq.*

⁷ Instructions for Completing the Schools and Libraries Universal Service Services Ordered and Certification Form (FCC Form 471) (December 1998), at 15 (Form 471 Instructions).

⁸ See SLD Web Site, <<http://www.sl.universalservice.org>>; see Instructions for Completing the Schools and Libraries Universal Service Services Ordered and Certification Form (FCC Form 471), OMB Approval No. 3060-0806 (December 1998) (FCC Form 471 Instructions).

⁹ See Request for Review of the Decision of the Universal Service Administrative Company by Uby Community Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc., CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 23267 (Com. Car. Bur. 2000); Request for Review of the Decision of the Universal Service Administrator by Anderson School, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc., File No. SLD-133664, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610, para. 8 (Com. Car. Bur. 2000). The "30 percent policy" is not a Commission rule, but rather is an SLD operating procedure established pursuant to FCC policy. See Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service, CC Docket Nos. 97-21 and 96-45, Third Report and Order in CC Docket No. 97-21 and Fourth Order on Reconsideration in CC Docket No. 97-21 and Eighth Order on Reconsideration in CC Docket No. 96-45, 13 FCC Rcd 25058 (1998). This operating procedure, used during SLD's application review process, enables SLD to efficiently process requests for funding for services that are eligible for discounts but that also include some ineligible components. If less than 30 percent of the request is for funding of ineligible services, SLD normally will consider the application and issue a funding commitment for the eligible services. If 30 percent or more of the request is for funding of ineligible services, SLD will deny the funding request in its entirety. The 30 percent policy allows SLD to efficiently process requests for funding that contain only a small amount of ineligible services without expending significant fund resources working with applicants that are requesting funding of ineligible services.

4. The instant Request for Review arises from SLD's denial of Funding Request Number (FRN) 221270 of Everett's Funding Year 2 application.¹⁰ FRN 221270 requests internal connections, including the purchase of equipment and associated shipping, installation, and maintenance costs, with a total pre-discount cost of \$356,125.00.¹¹ In its Funding Commitment Decision Letter, issued October 19, 1999, SLD denied FRN 221270, finding that "30% of more of this FRN is a request for WAN [Wide Area Network] and FAX [Facsimile] modules which are ineligible products based on program rules."¹²

5. On November 16, 1999, Everett appealed to SLD, claiming that the voice/fax modules were components of routers, and as such, eligible for discounts.¹³ On April 21, 2000, SLD denied the appeal.¹⁴ It found: "According to applicant documentation, this request included voice/fax card and module network 2 Ethernet WAN that are ineligible products in accordance to program rules."¹⁵ SLD concluded that because this was 40% of the total equipment costs of \$342,000, 40% of the freight, installation, and maintenance costs associated with this equipment must also be deemed ineligible, and that therefore, more than then 30% of the request was for ineligible services.¹⁶ It therefore affirmed the denial of the entire request.¹⁷

6. Everett then filed the pending Request for Review. In its Request for Review, Everett does not dispute that the WAN module is ineligible, but argues that the voice/fax module is eligible internal connections equipment, because it is part of an eligible router.¹⁸

7. On SLD's Eligible Services List, voice/fax modules are listed as eligible if they are used as part of eligible equipment.¹⁹ Everett claims that the module is indeed part of an eligible router. At the time the Administrator's Decision on Appeal was issued, SLD's web site provided that otherwise eligible internal connections "that transform voice to Internet protocol for the purpose of voice-over Internet telephony are not eligible."²⁰ Everett, in its Appeal to

¹⁰ Request for Review, at 1; FCC Form 471, Everett School District #2, filed July 2, 1999 (Year 2 Form 471).

¹¹ Year 2 Form 471, at 3; Letter from Ken Toyn, Everett School District #2, to Schools and Libraries Division, Universal Service Administrative Company, filed November 16, 1999 (Appeal to SLD), attachment.

¹² Letter from Schools and Libraries Division, Universal Service Administrative Company, to Ken Toyn, Everett School District #2, dated October 19, 1999 (Funding Commitment Decision Letter), at 6.

¹³ Appeal to SLD, at 1.

¹⁴ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Ken Toyn, Everett School District #2, dated April 21, 2000, at 2.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Request for Review, at 1.

¹⁹ See SLD Web Site, <http://www.sl.universalservice.org/data/pdf/EligibleServicesList_12_29_00.pdf>.

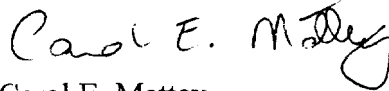
²⁰ SLD Web Site, <<http://www.sl.universalservice.org/reference/eligible.asp>>.

SLD, attached a product description that stated that the voice/fax module it sought support for “enable[s] packet voice technologies including VoIP [Voice Over Internet Protocol] and VoFR [Voice Over Frame Relay].”²¹ Thus, SLD found the voice/fax module ineligible as a result of its categorical exclusion of internal connections used for Internet telephony.

8. Since the time when SLD reviewed Everett’s application, however, SLD, in consultation with the Bureau, has reexamined the eligibility of VOIP equipment under the Commission’s rules. The current eligible services list states that “[i]nternal [c]onnections components that include functionality for real-time or near real-time voice or video over IP (VoIP), if otherwise eligible, are eligible for discount.”²² Because this eligibility standard was not in place at the time of SLD’s prior decision, we remand the application to SLD for review of FRN 221270 consistent with the revised eligible services list.

9. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission’s rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed by Everett School District #2 on May 22, 2000 is GRANTED, and the application is REMANDED to SLD for further action.

FEDERAL COMMUNICATIONS COMMISSION



Carol E. Matthey
Deputy Chief, Common Carrier Bureau

²¹ Appeal to SLD, at 1.

²² SLD Web Site, <http://www.sl.universalservice.org/data/pdf/EligibleServicesList_101701.pdf>.